

BUTTES RESOURCES CO.

IBLA 82-781

Decided June 29, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 12320 through U MC 12577.

1. Administrative Practice -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Recordation

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

APPEARANCES: Carolyn Driscoll, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Buttes Resources Company appeals the April 21, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which declared the P.S. Nos. 108 through 298, P.S. No. 300, P.S. Nos. 318 through 351, and P. S. Nos. 354 through 385 lode mining claims, U MC 12320 through U MC 12577, abandoned and void because no proof of labor or notice of intent to hold the claims was filed with BLM in 1978 prior to December 31 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(b). The claims were located in March and April 1977, and copies of the notices of location were timely filed with BLM.

Appellant categorically denies the charge in the decision and asserts it did file a proof of labor in 1981. Appellant obviously misread the

decision as it refers to failure of appellant to file a proof of labor in 1978, not 1981.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to record a copy of the notice of location with the proper office of BLM within 90 days after location, and to file for record a proof of labor or notice of intent to hold the claim in both the local office where the notice of location is recorded and in the proper office of BLM on or before December 30 of the calendar year following the year in which the claim was located, and in every year thereafter.

Examination of the case file discloses that the proof of labor for the year 1978 was received by BLM January 2, 1979. Subsequent proofs of labor were received by BLM August 30, 1979, September 17, 1980, and September 8, 1981.

January 2, 1979, was a Tuesday. BLM was officially closed to the public December 30, 1978, Saturday; December 31, 1978, Sunday; and January 1, 1979, Monday, a holiday.

Regulation 43 CFR 1821.2-2(e), Time limit for filing documents, provides:

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public.

Notwithstanding that the proof of labor for an unpatented mining claim must be filed in the proper office of BLM prior to December 31, we hold that the cited regulation governs in the situation where the BLM office was not open to the public on December 30, and the required instrument was received and date stamped by the BLM office on January 2, the next date the BLM office was open to the public.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case file remanded to BLM for appropriate action consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

